

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

NORFOLK COUNTY RETIREMENT SYSTEM,
individually and on behalf of all others similarly
situated,

Plaintiff,

v.

COMMUNITY HEALTH SYSTEMS, INC.,
WAYNE T. SMITH and W. LARRY CASH,

Defendants.

Consolidated
Civil Action No.: 11-cv-0433

Judge Waverly D. Crenshaw, Jr.
Magistrate Judge Joe B. Brown

JURY TRIAL DEMANDED

**DEFENDANTS' RENEWED PARTIAL MOTION TO
DISMISS THE AMENDED COMPLAINT**

Defendants Community Health Systems, Inc. (“CHSI”), Wayne T. Smith, and W. Larry Cash (together, “Defendants”), by and through their undersigned counsel, hereby move to dismiss, in part, Plaintiff’s First Amended and Consolidated Class Action Complaint (the “Amended Complaint”) with prejudice pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Defendants file this renewed partial motion to dismiss with respect to issues that were left undecided by this Court in its opinion dismissing the Amended Complaint, and by the Sixth Circuit’s decision reversing and remanding that opinion. Specifically, this renewed motion addresses Plaintiff’s securities-fraud claims based on statements that Defendants made after the Tenet Healthcare Corporation filed a lawsuit against CHSI in April 2011 (the “Post-Tenet Statements”).

As set forth in Defendants’ Memorandum of Law in Support of Renewed Partial Motion to Dismiss the Amended Complaint, Plaintiff fails to state a securities-fraud claim with respect to

the Post-Tenet Statements, for three independent reasons:

1. The Post-Tenet Statements are not actionable misstatements because they are so vague and general that they are immaterial as a matter of law; they are subjective opinions that are likewise immaterial as a matter of law; and they fall squarely within the statutory safe harbor for “forward-looking” statements.
2. Plaintiff fails to plead facts establishing a “strong inference” of scienter with respect to the Post-Tenet Statements, as required in securities-fraud cases, because the Amended Complaint is devoid of factual allegations that Defendants’ stated opinions were contrary to what they actually believed at the time.
3. Plaintiff fails adequately to plead loss causation with respect to the Post-Tenet Statements—*i.e.*, that the alleged “corrective disclosure” (an October 2011 earnings report) revealed to the market the pertinent truth that was concealed. That is because the October 2011 earnings report did not reveal new information to the market, as required for a cognizable corrective disclosure, and because the report also did not reveal the “relevant truth” about the Post-Tenet Statements.

WHEREFORE, for the reasons stated herein and in Defendants’ Memorandum of Law in Support of Renewed Partial Motion to Dismiss the Amended Complaint, Defendants respectfully request that the Court dismiss with prejudice Plaintiff’s claims based on the Post-Tenet Statements.

Dated: February 9, 2018

/s/ Gary A. Orseck

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been served upon the following Filing Users through the Court's Electronic Filing System:

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this 9th day of February, 2018.

/s/ Gary A. Orseck _____